STATUTORY INSTRUMENTS

2017 No. 1293 (L. 24)

MAGISTRATES' COURTS, ENGLAND AND WALES

PROCEDURE

The Magistrates' Courts (Detention and Forfeiture of Listed Assets) Rules 2017

Made - - - -	*11th December 2017*
Laid before Parliament	*18th December 2017*
Coming into force - -	*16th April 2018*

The Lord Chief Justice, with the concurrence of the Lord Chancellor, makes the following Rules in exercise of the powers conferred by section 144 of the Magistrates' Courts Act 1980(**1**):

Citation and Commencement

1. These Rules may be cited as the Magistrates' Courts (Detention and Forfeiture of Listed Assets) Rules 2017, and come into force on 16th April 2018.

Interpretation

2. In these Rules—

(a) "the Act" means the Proceeds of Crime Act 2002(**2**);

(b) "document" includes any notification required to be given under these Rules;

(c) "electronic communication" has the meaning given by section 15(1) of the Electronic Communications Act 2000(**3**);

(**1**) 1980 c. 43. Section 144 has been amended by section 109(1) and paragraphs 245(1), (2), (5) of Schedule 8 and Schedule 10 to the Courts Act 2003; section 15(1) and paragraphs 99, 102(1), (2), (3)(a), (3)(b), (4) and (6) of Schedule 4 to the Constitutional Reform Act 2005; section 208(1) and paragraphs 42, 43(b) of Schedule 21 to the Legal Services Act 2007; Article 3(2) and paragraphs 1(1), (2) – (6) of Schedule 2 to SI 2012/2398 and section 17(6) and paragraphs 39, 52 and 99 of Schedule 10 to the Crime and Courts Act 2013.

(**2**) 2002 c.29. Chapters 3A and 3B of Part 5 of the Act were inserted by sections 15 and 16 of the Criminal Finances Act 2017 (c. 22).

(**3**) 2000 c. 7. Section 15(1) is amended by section 406 of, and paragraph 158 of Schedule 17 to, the Communications Act 2003 (c. 21).

(d) words and expressions used otherwise have the same meaning as in Chapter 3A of Part 5 of the Act.

Prior approval of searches for property

3.—(1) An application to a justice of the peace under section 303E(1)of the Act for prior approval of a search for property under section 303C of the Act may be made without notice.

(2) A justice of the peace may grant such an application without a hearing and may conduct any hearing in private.

First application for the further detention of seized property

4.—(1) The first application under section 303L(4) of the Act for an order under section 303L(1) of the Act for the further detention of property seized under section 303J of the Act must be made in writing and sent to the court before which the applicant wishes to make the application.

(2) But where the reasonable grounds for suspicion which led to the seizure of property to which an application under section 303L(4) of the Act relates are connected to—

(a) the reasonable grounds for suspicion which led to the seizure of other property to which a previous order made under sections 295(2) or 303L(1) of the Act relates; or

(b) the reasonable grounds for suspicion which led to the making of a previous account freezing order under section 303Z3(2) of the Act, then the application must specify the connection to any such previous order and may be sent to any court which made a previous order listed in sub-paragraph (a) or (b).

(3) Except where paragraph (4) or paragraph (7) applies, a copy of the written application and notification of the hearing of the application must be given by the applicant to the person from whom the property was seized.

(4) Where seized property is found in a means of unattended dispatch, such as an unattended letter, parcel or container, copies of the written application and notification of the hearing of the application must be sent by the applicant to the sender and intended recipient of the means of unattended dispatch.

(5) But where paragraph (4) applies the applicant is not required to send copies of the written application and notification of the hearing to a sender or intended recipient who cannot be identified.

(6) Where paragraph (4) applies, the court shall not decline to hear an application solely on the ground that it has not been proved that the sender and intended recipient have been given a copy of the written application and notification of the hearing.

(7) Where unattended property is seized (other than where the property is found in a means of unattended dispatch) the applicant need not give a copy of the written application and notification of the hearing to any person.

(8) The applicant must inform the court of any person known to be affected by the order, as soon as practicable after that person is so identified.

(9) The court must give—

(a) notice of the order; and

(b) a copy of the order,

to the person from whom the property was seized and to any other person known to be affected by the order.

Further applications for the further detention of seized property

5.—(1) An application under section 303L(4) of the Act for a further order under section 303L(1) for the further detention of property may be sent to the court to which the first application under section 303L(4) was sent, and must specify the grounds on which it is made.

(2) The court must send a copy of the application to every person to whom notice of previous related orders made under section 303L(1) of the Act has been given.

(3) The court must fix a date for the hearing of the application, which, unless directed otherwise, shall not be earlier than seven days from the date on which it is fixed, and must notify that date to the applicant and every person to whom notice of the previous orders has been given.

(4) The applicant must inform the court of any person known to be affected by the order, as soon as practicable after that person is so identified.

(5) The court must give a copy of the order to every person to whom notice of the previous related orders has been given.

(6) The court must also give—

(a) notice of the order, and

(b) a copy of the order,

to any person other than one referred to in paragraph (4) known to be affected by the order.

Applications for the release of detained property

6.—(1) An application under section 303N or 303V of the Act for the release of detained property must be made in writing and sent to the court before which the applicant wishes to make the application, and must specify the grounds on which it is made.

(2) But if the applicant has been given notice of an order under section 303L(1) of the Act in respect of the detained property, then the application must be sent to the court which sent the applicant that notice.

(3) The court must send a copy of the application to—

(a) the Commissioners for Her Majesty's Revenue and Customs, if the property to which the application relates was seized by an officer of Revenue and Customs;

(b) the Director General of the National Crime Agency, if the property to which the application relates was seized by a National Crime Agency officer who is designated under section 10 of the Crime and Courts Act 2013;

(c) the chief officer of the police force to which the constable belongs, if the property to which the application relates was seized by a constable;

(d) the chief officer of the police force concerned, if the property to which the application relates was seized by an accredited financial investigator who is—

(i) a member of the civilian staff of a police force, including the metropolitan police force, (within the meaning of Part 1 of the Police Reform and Social Responsibility Act 2011(**4**)), or

(ii) a member of staff of the City of London police force;

(e) the solicitor acting for the Secretary of State, if the property to which the application relates was seized by an immigration officer;

(f) the solicitor acting for a government department, if the property to which the application relates was seized by an accredited financial investigator who is a member of staff of that

(**4**) 2011 c. 13.

department of the government in the United Kingdom, but who is not an officer of Revenue and Customs, a constable or an immigration officer;

(g) the employer of an accredited financial investigator, if the property to which the application relates was seized by that accredited financial investigator, and the employer is not otherwise mentioned in this paragraph;

(h) the Director of Public Prosecutions, where the Director has given notification under rule 10; and

(i) any other person to whom notice of the order under section 303L(1) was given.

(4) The court must fix a date for the hearing of the application, which, unless directed otherwise, shall not be earlier than seven days from the date on which it is fixed, and must notify that date to the applicant and to every person to whom a copy of the application is required to be sent under paragraph (3).

(5) At the hearing of an application under section 303V(1) of the Act, the court may, if it thinks fit, order that the applicant be joined as a party to all the proceedings in relation to the detained property.

(6) A direction under section 303N(2) of the Act must provide for the release of the property within seven days of the date of the making of the direction or such longer period as with the agreement of the applicant may be specified in the direction, except that property shall not be released whilst section 303O(9) or (10) of the Act applies.

(7) An order under section 303V(4) or (5) of the Act must provide for the release of the property within seven days of the date of the making of the order or direction, or such longer period as, with the agreement of the applicant, may be specified, except that property shall not be released whilst section 303O(9) or (10) of the Act applies.

Application for forfeiture of detained property

7.—(1) An application under section 303O(1) of the Act for the forfeiture of detained property must be made in writing and sent to the court to which applications for the continued detention of the property under section 303L(4) of the Act have been sent.

(2) Where no applications in respect of the property have been made under section 303L(4) of the Act, the application shall be sent to—

(a) the court before which the applicant wishes to make the application; or

(b) where the reasonable grounds for suspicion which led to the seizure of property to which the application for forfeiture relates are connected to the reasonable grounds for suspicion which led to—

(i) the seizure of property to which an order made under section 295(2) or 303L(1) of the Act relates, or

(ii) the making of an account freezing order under section 303Z3(2),

to the court which made the order listed in sub-paragraph (i) or (ii).

(3) The applicant must send a copy of the application to every person to whom notice of an order made under section 303L(1) of the Act in respect of the detained property has been given and to any other person identified by the court as being affected by the application.

(4) The court must fix a date for a directions hearing, which, unless directed otherwise, shall not be earlier than seven days from the date on which it is fixed, and must notify that date to the applicant and to every person to whom a copy of the application is required to be sent under paragraph (3).

(5) At the directions hearing, the court may give directions relating to the management of the proceedings, including directions as to the date for the hearing of the application.

(6) If neither the person from whom the property was seized, nor any other person who is affected by the detention of the property, seeks to contest the application, the court may decide the application at the directions hearing.

(7) A copy of an order for the forfeiture of detained property under any of sections 303O(3) or 303R(7) of the Act must be given by the court to every person to whom notice of an order made under section 303L(1) of the Act in respect of the detained property has been given and to any other person known to be affected by the order.

Agreements about associated and joint property

8.—(1) Where section 303Q(1) of the Act applies (agreements about associated and joint property) and the parties agree, the court may order the person who holds the associated property or who is the excepted joint owner to make a payment to the person identified in the order.

(2) Prior to the making of an order under paragraph (1), the court must request and the parties must provide—

(a) details of the proposed agreement between the parties as to the value of the forfeitable property;

(b) details of any agreed reduction in the amount payable;

(c) confirmation that the agreement is in writing; and

(d) a draft order for the court's consideration.

(3) Where section 303Q(1) of the Act applies but the court has not been notified that the parties agree that the court should make an order under section 303Q(1) of the Act, the court may give directions as to the date by which the parties are to communicate the details in paragraph (2) to the court.

(4) A copy of an order under section 303Q(1) of the Act must be given by the court to every person to whom notice of an order made under section 303L or an application under section 303O in respect of the detained property has been given, and to any other person known to be affected by the order.

Application for compensation

9.—(1) An application under section 303W(1) of the Act for compensation must be made in writing and sent to the court before which the applicant wishes to make the application.

(2) But if the applicant has been given notice of an order under section 303L(1) of the Act in respect of the property which is the subject of the application, then the application must be sent to the court which sent the applicant that notice.

(3) The court must send a copy of the application to—

(a) the Commissioners for Her Majesty's Revenue and Customs, if the property which is the subject of the application was seized by a customs officer;

(b) the Director General of the National Crime Agency, if the property which is the subject of the application was seized by a National Crime Agency officer who is designated under section 10 of the Crime and Courts Act 2013(**5**);

(c) the chief officer of the police force to which the constable belongs, if the property which is the subject of the application was seized by a constable;

(d) the Director of the Serious Fraud Office, if the property which is the subject of the application was seized by an officer of the Serious Fraud Office;

(**5**) 2013 c. 22.